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285-1985a
Communications
C.R. Legislation

OGC REVIEW COMPLETED

20 September 1955

MEMORANDUM FOR: Deputy Director of Communications

SUBJECT : Proposed Redraft of Section 606 of Communications Act of 1934

REFERENCE : Your Memorandum, Dated 12 August 1955, and Accompanying Papers

ENCLOSURE : Proposed Redraft by this Office of Section 606

1. Your memorandum requested the comment of this Office on the proposed redraft of section 606 of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. 1, et seq. (1934)) which had been forwarded to this Agency by a memorandum dated 8 August 1955 from the Executive Office of the President (Office of Defense Mobilization, Telecommunication Planning Committee).

2. We understand the proposed redraft was accomplished with the purposes of:

(a) empowering the President to take certain actions as regards interstate and foreign communications in a time of war or national emergency short of war;

(b) consistently defining the situation in which the President could take such actions;

(c) broadening the jurisdiction of the President to include that over both radio and wire communications in the Panama Canal Zone;

(d) empowering the President to delegate the powers granted him to a person or body of his appointment; and

(e) providing for the avoidance by the President of certain compulsory sections of the Act in time of war or in time of national emergency short of war.

3. Rather than comment on the proposed language for section 606, we chose completely to redraft it. Our proposal accompanies this memorandum as Enclosure (1).

4. Generally speaking, we reworked the entire section to the ends of eliminating unnecessary language, grouping like subjects together in the

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some subsections, placing these subsections in what we deem an acceptable order of occurrence, clarifying the language in terms of the apparent intent of the statute and accomplishing the purposes of the original proposal. In so doing we have made a few minor changes in substance. But we believe that these changes either do not exceed the intention of the statute or serve to bring it up to date.

5. We have described the occasion short of actual war in which the President may exercise extraordinary powers over interstate or foreign commerce by radio and wire with the phrase -

"...or when the President has determined by proclamation that the national security is endangered by the conduct of another government . . ."

We deem this language broad enough to cover both a "police action" or "brush-fire" war, and a "cold war" situation not involving combat in which danger to the national security may be of sufficient seriousness to justify the exercise of the extraordinary powers. Also we believe that the particular phrase "... conduct of another government . . ." both eliminates the comparatively clumsy "threat of force" language proposed, and unquestionably renders the statute applicable to a foreign-inspired revolution to a country which is not a "foreign power", i.e., Puerto Rico. If our broad language gives too much power to the President, we suggest that there is little real danger of an American President aspiring to be a dictator and that the Congress can always withdraw what it has granted.

6. We believe we have assured consistency of this above-described and so-called "triggering" provision by stating it once in revised subsection (a) and then grouping thereunder all of the various powers which are deemed necessary for the President to have.

7. We have extended the jurisdiction within which the President may act to the Panama Canal Zone by providing in subsection (b)(1)(i) that he may exercise the powers granted -

"... within the jurisdiction of the United States, its territories and possessions;"

While this extension of jurisdiction carries beyond the Panama Canal Zone, there is no doubt that the Congress has jurisdiction over the possessions and territories, hence that a delegation of this jurisdiction may be made by the Congress to the President. We deem the additional scope of jurisdiction thus granted to be in keeping with the purpose of the basic legislation.

8. We have made specific provision in subsections (b)(3) and (4) for both the appointment of a person or body to whom the exercise of the extraordinary power may be delegated and the delegation itself. The language in section 606(b), as presently written, speaks of the President acting "through" another person or body instead of such person or body acting for him. This

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last is the declared intent of the proposal as per subparagraph 3(9) ("Discussion") of the memorandum of Panel #1 of the Telecommunication Planning Committee which accompanies your memorandum.

9. We have provided for the avoidance by the President of certain compulsory sections of the statute in subsection (a)(3) by declaring that the acts interpreted as being required by those sections shall be performed:

"...only pursuant to regulations promulgated by the President:"

This language gives the President control over the performance of the acts specified therein, enabling him to prohibit them or permit them under conditions specified by him.

10. In our proposed redraft, subsection (a) comprises the statement of the condition(s) upon which the President may exercise certain subsequently granted powers and a listing of these powers, including those pertaining to the negating of certain compulsory sections of the statute. Thus it combines the substantively similar provisions of subsection (a), as proposed by the Telecommunication Planning Committee (hereinafter referred to as TPC), plus the use of the armed forces proviso appearing in subsection (f) of the TPC draft and the time limitation and the extension of jurisdiction to the Panama Canal Zone provisions also appearing in subsection (a) of that draft.

11. Our subsection (b) lists the powers subsidiary and ancillary to the powers authorized by subsection (a), including the limitation as to the time of exercise. Thus it combines the time limitation and extension of application to the Panama Canal Zone provisions of subsection (a) of the TPC draft with the substance of subsection (b) of that draft. We have omitted any mention of a time limitation contingent upon the passing of a joint resolution by the Congress as being unnecessary. What the Congress grants it can take away without as much being set out in the statute.

12. Our subsection (c) comprises so much of subsection (a)(1) of the TPC draft as provides for the exemption from criminal or civil liability of any person complying with a Presidential directive with regard to the priority of communications. We felt that a separate section for this separate consideration was more appropriate than combining it with a statement of the power to establish priority by means of a proviso device as done in the TPC draft.

13. Our subsection (d) combines those parts of subsections (a)(2) and (e) of the TPC draft which deal respectively with the duty of the President to make just compensation to the owner for any preemptive action taken under section (a) and the procedures incident to the recovery of such compensation. Again, this was done in the interest of putting like subjects together in one subsection.

14. Our subsection (e) combines those provisions of subsections (f) and (g) of the TPC draft which deal with the criminality of certain actions in contravention of the exercise of the President's authority. Subsection (f) of the TPC draft provides that certain obstructions or retardations of inter-

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state communications are "unlawful". However, it provides no penalty for the acts so described. By itself, such a declaration is empty and has no place in the statute. If, however, the obstructions or retardations refer to the disobedience, etc., of a Presidential directive, prescribed in subsection (g) of the TPC draft, then we believe it preferable that the entire subject is best treated in one subsection and a penalty be provided.

15. Our subsection (f) combines the construction provisos appearing variously in subsections (c), (d) and (f) of the TPC draft. Omitted is that of subsection (d) against the President's having been empowered to -

"... take any action the force and effect of which shall continue beyond the date after which the taking of such action would not have been authorized."

We feel that this eventuality is provided against by so much of the statute as puts a limitation on the period for which the President may exercise the granted powers.

16. On the basis of the foregoing, it is the opinion of this Office that the draft of section 606 of the Act proposed by the TPC, while not legally objectionable, leaves much to be desired in the ways of organization, clarity and length. For whatever assistance it may give, respectfully we submit our own as being preferable.

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Office of General Counsel

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